



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

16

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Interim Guidance for Performing RCRA Inspections at On-Site Superfund Incinerators (OSWER Directive #9938-2a)

FROM: Bruce M. Diamond, Director
Office of Waste Programs Enforcement

TO: Waste Management Division Directors, Regions I-X

Attached is a final version of the interim guidance document Performing RCRA Inspections at On-Site Superfund Incinerators (OSWER Directive #9938-2a). Comments received from the Regions and Headquarters have been incorporated. OWPE developed this guidance in response to Don Clay's December 11, 1991, memo (attached) calling for RCRA inspections to be performed at Superfund on-site incinerators. This interim guidance will be replaced by a final guidance to address RCRA compliance at Superfund incinerators. We are working with OERR to develop procedures within the Superfund program for compiling or developing operating requirements and operating parameters (OROPs) for sites where incineration is the selected remedy and developing guidance to the Regions on how to compile and/or develop OROPs. If you or anyone on your staff would like more information about the interim guidance, please contact Denise Ergener at 703-603-9072 or Jeff Kelly at 202-260-2809.

cc: Henry Longest
Mike Shapiro
Lisa Friedman
Susan O'Keefe
William White

Attachments

EC DIC

Performing RCRA Inspections at On-Site Superfund Incinerators

An Interim Guidance

October, 1993
Office of Waste Programs Enforcement
U.S. Environmental Protection Agency
Washington, DC

Performing RCRA Inspections at On-Site Superfund Incinerators

An Interim Guidance

Purpose:

The purpose of this document is to provide interim guidance on verifying that Superfund on-site incinerators are burning waste or constituents in a manner that is protective of human health and the environment (e.g., in compliance with RCRA technical regulations). This verification will require a coordinated effort between RCRA and Superfund Regional staff. OWPE realizes that there is currently no single document outlining required operating parameters for Superfund incinerators. Without such a document, RCRA inspectors will have to refer to a number of documents to develop parameters to inspect against. OSWER, in conjunction with other offices and the Regions, will develop the content and procedures for developing site-specific operating requirements and operating procedures (OROP) documents for Superfund incinerators.

This document will assist RCRA inspectors in performing inspections at on-site Superfund incinerators that do not yet have an OROP. It is intended for inspectors already familiar with performing inspections at hazardous waste incinerators. This guidance will be revised to reflect the use of OROPs once the OROP content and development procedures are finalized.

Objectives:

- To help RCRA inspectors understand how the applicable, relevant, and appropriate requirements (ARARs) apply under CERCLA.
- To help RCRA and CERCLA personnel better coordinate their efforts in ensuring that operation of these Superfund incinerators are protective of human health and the environment.
- To help RCRA inspectors identify what documents will contain a Superfund on-site incinerator's operating parameters and other information necessary to perform an inspection.
- To discuss the appropriate response to potential problems identified from inspections conducted at Superfund on-site incinerators.

I. Background

On December 11, 1991, the Assistant Administrator of the Office of Solid Waste and Emergency Response (OSWER) transmitted a memo requesting that on-site incinerators at Superfund sites receive inspections by the RCRA program (see attachment). The inspections are to be of the type and frequency of those conducted at any other hazardous waste incinerator in the RCRA universe.

Given the unique circumstances under which Superfund on-site incinerators are regulated, RCRA inspectors may have to modify the way they prepare for their inspections of Superfund incinerators. This document outlines that process.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) outlines a process to assure that removal and remedial actions comply with other environmental laws. Removal action memoranda and remedial Records of Decision (ROD) must include and consider the identified applicable or relevant and appropriate requirements (ARARs) of the Resource Conservation and Recovery Act (RCRA), Clean Water Act (CWA), Safe Drinking Water Act (SDWA), Clean Air Act (CAA), and other Federal and State environmental laws.

RCRA inspectors must coordinate their efforts with Superfund site managers in order to obtain a list of the designated ARARs for a specific on-site Superfund incinerator. The Superfund site manager will also provide the RCRA inspector with the site-specific documents necessary to perform the inspection.

II. Coordinating with Superfund Programs

As soon as a Record of Decision (ROD) has been signed selecting incineration as the remedy at a removal or remedial site, Superfund should initiate communication with the RCRA Hazardous Waste Combustion Inspector for the State or Region (see attached list). Once the RCRA inspector has been contacted, the two programs can coordinate the timing of inspections (and/or the development of the OROP once the OROP development strategy is in place). Coordination with Superfund will continue in response to any problems found during the inspection since the RCRA inspector has no independent enforcement authority on a Superfund site.

Coordination between the Superfund and the RCRA programs is necessary to ensure that inspections of Superfund on-site incinerators are conducted in a timely fashion. For new Superfund incinerators, the inspector's first site visit may be during the incinerator's trial burn. Existing Superfund incinerators that have not yet been inspected by RCRA should be inspected immediately. Given the temporary nature of many Superfund incinerators, RCRA inspectors should schedule subsequent inspections based on the projected duration of operation. In most cases, frequent inspections should be performed early in the incinerator's operation. Once the inspections reveal no operating problems, inspections may be performed annually.

For existing Superfund on-site incinerators, the appropriate Superfund site manager will provide the RCRA inspector with the information needed to perform a successful inspection.

The documentation listing the site-specific ARARs and supporting documents is managed by different parties depending on whether the site is a remedial or a removal action or is federal or state lead.

Remedial actions:

Identifying ARARs is required for remedial actions. The identified ARARs will be found in the Record of Decision (ROD) for the specific Superfund site. The ROD and all supporting documentation should be found in the site's Remedial Site Files. The Remedial Site Files are developed and maintained by the Remedial Project Manager (RPM).

Removal actions:

EPA has given On-Scene Coordinators (OSCs) responsibility to identify and comply with ARARs to the extent practicable during a removal action. Any ARARs identified and all supporting documents for a removal site will be found in the Removal Site File. The Removal Site Files are developed and maintained by the On-Scene Coordinator.

Some of the supporting documents the Superfund site manager (i.e., RPM or OSC) must provide to the RCRA inspector are listed below. The documents needed will be dependent upon who has taken the lead in the site clean-up:

- **Action Memos** - For removal projects, additional information (operating parameters, design specifications, etc.) needed to perform the inspection will be found in the site's Action Memo. For non-time critical removals, the site manager should also provide Engineering Evaluations /Cost Analysis reports (EE/CA).

- **Consent Decree** - When the PRP is performing the clean-up as part of a consent decree, the decree may contain information pertinent to the inspection and any enforcement actions (A model CERCLA Consent Decree can be found in OSWER Directive No. 9835.17).

- **Consent or Unilateral Administrative Order** - When the PRP is performing the clean-up under an Administrative Order, additional information pertinent to performing the inspection and any enforcement actions may be found in the language of the Order (A model CERCLA Unilateral Administrative Order can be found in OSWER Directive No. 9833.0-2(b). A model Administrative Order on Consent can be found in OSWER Directive No. 9833.06).

- **Statement of Work Of Contract** - When EPA or the State has lead on a remediation and uses a contractor to perform the clean-up, the Statement of Work of the contract will contain further information (e.g., operating parameters, design specifications, etc.) necessary to perform an inspection. A Statement of Work of Contract (SOW) should also be reviewed when the potentially responsible party (PRP) has employed a contractor to perform the clean-up.

- **Work Plan** - This document and its attachments will provide the technical information (e.e., operating parameters, design specifications, etc.) necessary to perform the inspection. The two primary attachments are the Trial Burn Plan and the Remedial Action Plan.

Trial Burn Plan - As the incinerator is preparing for its trial burn, this attachment to the Work Plan will be drafted. It will outline the technical operating parameters to be used during the trial burn.

Remedial Action Plan - After the trial burn is performed, the operating parameters developed from the trial burn data will be listed in this attachment to the Work Plan.

The appropriate Superfund site manager will be responsible for providing the RCRA program with the site files containing the documents listed above.

III. Preparing & Performing the Inspection

After obtaining a list of site-specific RCRA ARARs from the ROD and operating parameters (from the Work Plan, its attachments, and other documents), the inspector may need to modify his/her existing hazardous waste incinerator inspection strategies based on the ARARs and Work Plan. This may sometimes mean reviewing the incinerator inspection procedures previously developed and deleting those portions that have not been identified as RCRA ARARs. This does not mean that potential problems identified during a RCRA inspection should be ignored if they have not been identified as ARARs. All potential problems should be recorded and reported.

Inspection checklists can be modified to reflect the identified RCRA ARARs. However, the format used to identify ARARs can vary widely. The inspector must carefully read through the ROD to find the ARARs. Be sure that your modified checklist reflect all the identified ARARs.

After reviewing the ARARs, Work Plan, and other documents to identify the scope of the inspection, inspections should be performed in the same manner as inspections at any other hazardous waste incineration facility in the RCRA universe. Any "violations" discovered during the inspection should be classified as outlined in the Hazardous Waste Incinerator Enforcement Strategy (April 1990, OSWER Directive Number 9938.8). The inspection report should include the list of RCRA ARARs identified for that specific site and results of observations based on those ARARs. The report should also include any potential discrepancies with the RCRA regulations observed outside the scope of the ARARs.

IV. Response to Problems Identified From the Inspection

The coordination between RCRA and Superfund programs should continue in formulating an effective response to any problems identified from the inspection. RCRA inspectors must provide Superfund personnel with compliance information gathered from the inspection so that Superfund can make response decisions. Since Superfund on-site incinerators can be managed by different groups, many possible response scenarios may exist. Some examples of response scenarios are given below.

The type of response to problems identified during the inspection will depend upon the gravity of the problem. The inspector can classify the violations based on the violation classification criteria given in the Hazardous Waste Incinerator Enforcement Strategy (OSWER Dir. # 9938.8). The following paragraphs discuss the appropriate actions to be taken after the inspections are performed.

A. High-Priority Violations (HPV): Shut Down

If the inspector finds **extensive problems (e.g., those posing imminent danger to human health and the environment)** during the inspection and has concluded, after consultation with her/his management, that the facility is a HPV, the following actions should be taken:

1. The inspector should inform the OSC, or RPM, of the problems found during the inspection and the subsequent actions to be taken by the inspector.
2. The inspector should immediately inform his/her supervisor of the problem.
3. If the inspector's supervisor and OSC, or RPM, concur that immediate action is necessary, the OSC, or RPM, will shut down the incinerator's operations until the problems are remedied.
4. The OSC, or RPM, will notify his/her Division Director.
5. The Division Director will be responsible for taking actions to assure that the problems are rectified as soon as possible.
6. The OSC, or RPM, will notify the RCRA inspector when the problems have been rectified. The inspector will perform a follow-up inspection to assure all the problems have been rectified before the incinerator resumes operation.
7. Copies of the inspector's final report will be sent to the Superfund Site Manager, Superfund Remedial/Removal Branch Chief.

B. Medium-Priority/Low-Priority Violations: Follow-up Inspection

For problems which do not cause an imminent risk to human health or the environment, the following actions should be taken:

If EPA or the State has the lead on cleaning up a site and the Corps of Engineers' contractor, or the State, is operating the incinerator:

1. The inspector will contact the Superfund Site Manager (e.g., OSC or RPM) who would then be responsible for rectifying the problem.
2. The RCRA inspector will perform a follow-up inspection within 10 working days to ensure that the problems have been corrected. If they have not, further actions may be needed (see section C below).
3. Copies of the inspection report will be sent to the Superfund Site Manager, Superfund Removal/Remedial Branch Chief, and the Corps of Engineers' Site Manager.

If EPA or the State has the lead in cleaning up a site and has hired a contractor to operate the incinerator:

1. The inspector will contact the Superfund Site Manager (e.g., OSC or RPM) who, in turn, would contact the Superfund Contracts Officer (CO) managing the site's contract. The CO would then be responsible for rectifying the problem.
2. The RCRA inspector will perform a follow-up inspection within 10 working days to ensure

Trial Burn Plan - As the incinerator is preparing for its trial burn, this attachment to the Work Plan will be drafted. It will outline the technical operating parameters to be used during the trial burn.

Remedial Action Plan - After the trial burn is performed, the operating parameters developed from the trial burn data will be listed in this attachment to the Work Plan.

The appropriate Superfund site manager will be responsible for providing the RCRA program with the site files containing the documents listed above.

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2. The inspector should immediately inform his/her supervisor of the problem.
3. If the inspector's supervisor and OSC, or RPM, concur that immediate action is necessary, the OSC, or RPM, will shut down the incinerator's operations until the problems are remedied.
4. The OSC, or RPM, will notify his/her Division Director.
5. The Division Director will be responsible for taking actions to assure that the problems are rectified as soon as possible.
6. The OSC, or RPM, will notify the RCRA inspector when the problems have been rectified. The inspector will perform a follow-up inspection to assure all the problems have been rectified before the incinerator resumes operation.
7. Copies of the inspector's final report will be sent to the Superfund Site Manager, Superfund Remedial/Removal Branch Chief.

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For problems which do not cause an imminent risk to human health or the environment, the following actions should be taken:

If EPA or the State has the lead on cleaning up a site and the Corps of Engineers' contractor, or the State, is operating the incinerator:

1. The inspector will contact the Superfund Site Manager (e.g., OSC or RPM) who would then be responsible for rectifying the problem.
2. The RCRA inspector will perform a follow-up inspection within 10 working days to ensure that the problems have been corrected. If they have not, further actions may be needed (see section C below).
3. Copies of the inspection report will be sent to the Superfund Site Manager, Superfund Removal/Remedial Branch Chief, and the Corps of Engineers' Site Manager.

If EPA or the State has the lead in cleaning up a site and has hired a contractor to operate the incinerator:

1. The inspector will contact the Superfund Site Manager (e.g., OSC or RPM) who, in turn, would contact the Superfund Contracts Officer (CO) managing the site's contract. The CO would then be responsible for rectifying the problem.
2. The RCRA inspector will perform a follow-up inspection within 10 working days to ensure

that the problems have been corrected.

3. Copies of the inspection report will be sent to the Superfund Site Manager, Superfund Removal/Remedial Branch Chief, the Contracting Officer, and the contractor.
4. A copy of the report should also be sent to the Office of Regional Counsel to consider further actions against the contractor if the problems are not corrected (see section C below).

If the Potentially Responsible Party (PRP) has the lead on cleaning up a site and is operating the incinerator itself:

1. The inspector will contact the Superfund Site Manager who would then be responsible for ensuring the PRP corrects the problem.
2. The RCRA inspector will perform a follow-up inspection within 10 days to ensure that the problems have been corrected.
3. Copies of the inspection report will be sent to the Superfund Site Manager, Superfund Removal/Remedial Branch Chief, and the PRP.
4. A copy of the report should also be sent to the Office of Regional Counsel to consider further actions against the PRP (and/or contractor their contractors) if the problems are not corrected (see section C below).

C. Further Enforcement Actions When Problems Are Not Remedied

For fund and PRP lead incineration projects, the contracting authority's (i.e., EPA, the state, or PRPs) paramount leverage for ensuring compliance with the terms of the contract is based on its ability to terminate a contract. Although this authority is significant, there may be less severe means to ensure contract compliance such as implementing dispute resolution procedures with contractors, and developing procedures which adequately address the possibility of operational upsets¹ or periods of noncompliance. For example, procedures could be established whereby, in the event of an operational upset (e.g., emission exceeds performance criteria), a contractor would be required to immediately notify the contracting authority, temporarily stop the waste feed until a detailed report has been prepared which addresses the operational upset. These procedures may be stated in a government contract, or a Consent Decree, but at a minimum, procedures should be stated in the incineration operations plan. More stringent requirements could be placed on the contractor for upsets of greater severity or greater frequency. For example, procedures could require that before a contractor could resume waste feeding, it would be required to gain approval from the contracting authority.²

For enforcement lead clean-ups, EPA has some other options when operational problems are not remedied. Under the terms of a Consent Decree, the Agency may impose penalties against PRPs, seek dispute resolution with PRPs, or refer the case to the Department of Justice to enforce the Consent Decree, pursuant to CERCLA section 106.

¹ The term operational upset refers to any emission/discharge that exceeds the criteria established in the contract.

² These procedures are based on Region VI's internal operating procedures for addressing contractor noncompliance. For further information regarding these procedures, contact Steve Gilrein, Region VI, (214) 655-6710.

D. If No Problems are Found:

If no problems are found during the inspection, the inspector should submit copies of his/her final report to the following parties (where applicable):

- Site Manager
- Remedial/Removal Branch Chiefs
- Corps of Engineers
- Potential Responsible Parties
- Contractors

Bibliography

The following documents were used to produce this guidance and are recommended for further information:

Hazardous Waste Incinerator Compliance/Enforcement Strategy. EPA, Office of Waste Programs Enforcement, April 1990, OSWER Directive Number 9938.8.

CERCLA Compliance with Other Laws Manual. EPA, Office of Emergency and Remedial Response, August 1988, EPA/540/G-89/006.

Enforcement Project Management Handbook. EPA, Office of Solid Waste and Emergency Response, January 1991, OSWER Directive Number 9837.2-A.

Enforcement Response Policy. EPA, Office of Waste Programs Enforcement, October 1988, OSWER Directive Number 9900.0-1A.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OSWER DIRECTIVE, #9938.06-2

DEC 11 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: RCRA Inspections at Superfund On-Site Incinerators

FROM: Don R. Clay *Richard Sumner*
Assistant Administrator

TO: Waste Management Division Directors, Regions I-X
Environmental Services Division Directors, Regions I-X

In an effort to enhance our oversight of on-site incineration at Superfund sites, I am asking that starting immediately, each of you assure that any such incinerators operating in your region receive inspections by RCRA inspectors. I intend for this to apply in all cases, both remedial and removal actions, where RCRA is an ARAR. These inspections should be of the type and frequency of those conducted at any other incineration facility in your RCRA universe. To effectuate this, it will be necessary for you to establish an internal notification system to inform your RCRA staff when a new Superfund on-site incinerator (either PRP or EPA lead) comes on-line. If, in doing these inspections, any information becomes available to indicate that an applicable substantive requirement of RCRA is not being met, it is obviously imperative that immediate corrective action be undertaken.

I believe that this effort will place a minimal burden on the RCRA program but that it will aid significantly in our efforts to assure safe management of Superfund clean-up activities. Thank you for your cooperation in implementing this. I have asked Bruce Diamond and Henry Longest to issue more detailed guidance on the implementation of this policy. In the meantime, if you have any questions, please direct them to Paul Nadeau in OERR or Susan Bromm in OWPE.

cc: Henry Longest
Bruce Diamond
Sylvia Lowrance

Attachment II

List of Designated Specialized HW Combustion Inspectors

Region 1 **Stephen Yee** (617-573-9644)
EPA Region 1
JFK Federal Bldg. Room 2203 Mail Code HEE-CAN6
Boston, Mass. 02203

Tim Gaffey (617-223-5542)
FAX #: 617-573-9662
EPA Region 1
JFK Federal Bldg. Room 2203 Mail Code HEE-CAN6
Boston, Mass. 02203

Region 2 **Don Wright** (908-321-6764) ESD-Monitoring Mgt Branch
 (Specialized HW Combustion Inspector)
FAX #: 908-321-6788
US EPA Region 2
Environmental Services Division
Air and Water Section
Woodbridge Ave.
Edison, NJ 08837

John Wilk (264-6144) Air & Waste Mgt. Division
 (enforcement case development expertise)
US EPA Region 2
Air and Waste Management Division
Jacob K. Javitz Building
26 Federal Plaza
New York, New York 110278

Abdool Jabar (212-264-0683)
 (FAX: 212-264-7613)
EPA Region 2
Jacob K. Javitz Building Mail Code 2AWMHWC
26 Federal Plaza
New York, New York 110278

Region 3 **Louis Pizarro** (215-597-7188) (3HW51)
 (FAX #: 215-580-2013)
EPA Region 3
841 Chestnut St
Mailcode 3HW51
Philadelphia, PA 19107

Attachment II (cont'd)

Region 3
(cont'd)

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Susan Sciarratta (215-597-7259)
(FAX #: 215-580-2013)

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Region 4

Dave Langston
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Region 5

Jae Lee, (312-886-4749)
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Chicago, IL 60604-3507
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Region 6

Stan Burger, RCRA Permits Branch (214-655-6460)

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Dallas, TX 75202

Brian Heineman, RCRA Enforcement Branch (214-655-6480)

EPA Region 6
1445 Ross Avenue, 12th Floor Suite 1200
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Phil Schwindt, ESD inspector (255-6486)

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Region 7

Gene Evans (913-551-7731)
(FAX: 913-551-5721)

EPA Region 7
726 Minnesota Avenue
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Attachment II (cont'd)

Region 8	Brent Truskowski (303-293-1704) (Fax: 303-293-1647) EPA Region 8 999 18th Street, Suite 500 Mail Code: 8H-WM, Utah/North Dakota Section Denver, CO 80202-2495
Region 9	Frank Laguna , RCRA California Enforcement Section (415-744-2120) EPA Region 9 75 Hawthorn San Francisco, CA 94105
Region 10	Kevin Schanilec (206-553-1061) EPA Region 10 1200 Sixth Avenue Mail Code HW 104 Seattle, WA 98101
NEIC	Richard Ida (303-236-5124) (FAX: 303-236-2395)